This does not, however, conclude the matter. It is admitted that the only person interested in the estate subject to the second defendant's right of maintenance, is the third defendant who is still an infant. The third defendant is represented by his guardian *ad litem* and, through his solicitors joined in framing the issues now before the Court, but no issue is raised as regards any maladministration on the part of the first defendant. There are no creditors and the estate duty, apart from a further claim with which this application is not concerned, has been paid. The only danger therefore to the sureties is that the third defendant may object to the handing over of the assets to the second defendant without the authority of an order of Court. But during the course of the hearing before me, the third defendant's counsel expressly disclaimed on behalf of his client any objection to this procedure having been adopted. In view of this and of the limited scope of the issues which by inferences exclude all other issues, I think that the third defendant is precluded from making any claim whatever against the sureties.

As a result, therefore, the plaintiff does not require the protection of an administration order, and no order need be made on the originating summons.

Order accordingly.

Solicitors: *Allen & Gledhill; Mendis & Ahlip; Braddell Bross; Sisson & Delay; Chan & Eber.*

REX v. MOONA MOHAMED HUSSAIN MARICAR

[A. Cr. J. (Terrell J.) October 8, 1935]

[Singapore Magistrate's Appeal No. 32 of 1935]

Criminal Procedure Code, s.295(5) — Grounds of Appeal.

In criminal appeals the rules laid down and particularly the provisions of the Ordinance with regard to the time within which grounds of appeal must be given must be adhered to and only in exceptional cases are these rules to be relaxed.

MAGISTRATE'S APPEAL.

Roland Braddell and *Battishill* for the appellant.

Clark (Solicitor-General) for the Crown.

The facts and arguments are sufficiently set out in the judgment.

Cur. Ad. Vult.

Terrell J.: This was a motion that the petition of appeal dated the 25th July, 1935 might be amended by substituting some 22 new grounds of appeal for the grounds of appeal mentioned in the original petition.

The history of the case is as follows: The accused was arrested on the 24th September, 1934 and after various remands, was charged on the 19th November, 1934 when he claimed trial. The trial was commenced on the 10th January, 1935 and continued at intervals until the 6th July, 1935 when the accused was convicted. There were in all 32 hearings. On the day that he was convicted the accused gave notice of appeal in accordance with section 295(1) of the Criminal Procedure Code. The notice, as required by section 295(2), gave Messrs. Sisson & Delay as the appellant's address for service.

Having received the notice of appeal it was the duty of the learned District Judge to make a signed copy of his grounds of decision. This was duly prepared and served upon Messrs. Sisson & Delay on the 18th July, 1935, and under section 295(4) it was the duty of the appellant to lodge three copies of his petition of appeal [37] within 10 days after service upon his of the grounds of decision. The last day for lodging the petition of appeal was accordingly the 27th July, 1935. [37]

On the 25th July Messrs. Drew & Napier lodged a petition of appeal. The grounds of appeal alleged in this petition were as follows:—

(a) the learned District Judge and First Magistrate was wrong in law, and

(b) that the conviction was against the weight of evidence.

This petition clearly did not comply with the provisions of section 295(5) of the Criminal Procedure Code which requires that the petition —

"shall contain such definite particulars of the points of law or fact in regard to which the Court appealed from is alleged to have erred."

It appears from the affidavits, and is not contradicted, that both the prosecution and Messrs. Sisson & Delay, the legal advisers of the appellant, received a copy of the record as the trial progressed. It is, however, stated in the appellant's affidavit that his new solicitors, Messrs. Drew & Napier, did not receive a copy of the record or of the grounds of decision until the 12th August, 1935. It must be presumed therefore that Messrs. Drew & Napier omitted for over three weeks to avail themselves of the material in the previous solicitors' hands.

On the 15th August the appellant desired to brief Mr. Roland Braddell who insisted upon being instructed by the appellant's solicitors. Thereupon it would appear that the appellant left Messrs. Drew & Napier and returned to Messrs. Sisson & Delay.

Nothing further happened until the 21st September, 1935 when this motion and the affidavit in support were filed.

The Acting Solicitor-General on behalf of the Crown submitted that the petition of appeal filed on the 25th July not having complied with the provisions of section 295(5) was a nullity, and the application must be treated as a petition for leave to appeal out of time. I do not think that this argument is sound. It is true that if the petition of July 25th had come before the Court in its present form the appeal would have failed, as no argument would have been allowed thereon, but I find it impossible to say that it was not a petition, and I treat this application as what it professes to be, namely an application to amend a petition of appeal.

Various authorities were cited from the Court of Criminal Appeal records, both here and in England, but in my opinion, although such authorities are useful as indicating the principle by way of analogy, the present application must be decided by reference to the special provisions of the Criminal Procedure Code

which are essentially different from the provisions of the Court of Criminal Appeal Ordinance and the orders and the rules made thereunder.

I have already referred to the relevant sub-sections of section 295 of the Criminal Procedure Code. Then we have section 297 which reads as follows:—

"The Supreme Court may, on the application of any person desirous of appealing who is debarred from so doing upon the ground of his not having observed some formality or some requirement of this Code, permit an appeal upon such terms and with such directions to the District Judge or to the Magistrate of the Police Court and to the parties as the Court considers desirable in order that substantial justice may be done in the matter."

It is submitted that this section gives the Court power to allow an amendment of the petition of appeal, but the section is rather narrowly worded. In the present case the appellant is not "debarred from appealing," he has merely lodged his appeal in such a form that his appeal must inevitably fail unless the grounds of appeal are amended, which is not quite the same thing. Be that as it may. I feel no doubt that the Court has inherent jurisdiction to allow an amendment of the grounds of appeal in a proper case.

The Court of Criminal Appeal Ordinance and the procedure thereunder accords more closely to the provisions of the Criminal Procedure Code previous to their amendment in 1933. There is no notice of appeal followed later by a petition of appeal when the grounds of judgment have been obtained. The appellant therefore is frequently under the obligation of filing his notice or petition before he or his counsel has ever seen the transcript of the notes of evidence, see *Wyman,* 13 Cr. A.R. p. 183, and *Adler,* 17 Cr. A.R. p. 105. The obligation to give particulars of the grounds of appeal results from the forms, which, in the case of a notice of appeal (Form IV) require the points of law to be specified, and in the case of a petition for leave to appeal (Form VI) require the grounds of appeal against the conviction to be "set forth." Under the Criminal Procedure Code, on the other hand, the appellant can obtain a copy of the record at any time on payment of $5 (section 294). After conviction he has 10 days in which to give notice of appeal. Then he has all the time during which the Magistrate prepares his grounds of decision, and he has 10 days more after the receipt of such grounds in which to prepare his petition of appeal.

In view of the strictness of the provisions relating to appeals to the Court of Criminal Appeal one would not be surprised to find that these provisions are sometimes relaxed, and counsel, after giving such notice as is reasonable, have been allowed to argue points not strictly covered by the petition (see *Rex* v. *Lee Kun,* 32 T.L.R. at p. 226). This is especially the case when the appellant has filed his petition without legal aid. *Arthur Hodgson,* 18 Cr. A.R. p. 7 and *Benjamin Adler,* [38] 17 Cr. A.R. p. 105 and *Sheppard,* [38] 17 Cr. A.R. at p. 172, but in *Adler's* case the Lord Chief Justice called attention to the fact that particulars of the misdirection, etc. must be stated in the notice of appeal, and in Sheppard's case, that it was not desirable to allow further grounds of appeal to be added and that the Court must be firm in the matter.

As regards the Court of Criminal Appeal in Singapore an application was made in *Nagalingam's* case (Singapore Criminal Appeal No. 1 of 1935) to argue additional grounds of appeal. The grounds alleged were that the counsel for the accused had been elsewhere engaged and that the length of the record involved considerable time in transcribing it. The Court (Huggard C.J. and Burton and Mills JJ.) ruled that neither of these grounds was sufficient, and the President added:

"The view of the Court is that the rules laid down, particularly the provisions of the Ordinance with regard to the time within which grounds of appeal must be given, must be adhered to, and that only in exceptional cases are these rules to be relaxed." (See [1935] M.L.J. pp. xxix and xxx).

So far then as appeals to the Court of Criminal Appeal are concerned the rules must be strictly observed and good and substantial grounds must be shown for relaxing them.

In my view these principles apply even more strongly in the case of appeals under the Criminal Procedure Code for the reason that, as stated above, the appellant is never in a position of having to file his grounds without having had an opportunity of seeing the record or the grounds of decision. I do not, of course, mean to lay down that the rules will never be relaxed. Every application must depend on its own particular circumstances, and in a case where the record had not been received and an application to extend the time was made before the expiration of the 10 days after the receipt of the grounds of judgment and substantial grounds were shown for the exercise of the Court's discretion, the time was extended to 10 days after the receipt of the record (*Rex* v. *Lee Siong Kiat,* Singapore Criminal Appeal No. 42 of 1934 — not reported on this point). On the other hand, in three Magistrates Appeals before Prichard J. last year, leave to amend the grounds of appeal was refused, the applications being apparently made *viva voce* at the hearing of the appeal, see [1934] M.L.J. pp. lxi and lxii, and *Rex* v. *Ng Guan Thong,* [1935] M.L.J. p. 25.

It is on the authorities essential that good grounds should be shown for the application and that it should be made at the earliest opportunity, and it is of course common to all applications for indulgence that the applicant should state his case fully and fairly and without withholding any information which might influence the Court in exercising its discretion. When the actual grounds are examined it will be found that one of the principal reasons for delay was that after his conviction the appellant changed his solicitors. The new solicitors did not apparently obtain from the old solicitors the necessary papers, with the result that the grounds of decision which had been in the hands of Messrs. Sisson & Delay since July 18th and the record of the proceedings which had been in their hands during the progress of the case never reached Messrs. Drew & Napier until August 12th. After that the appellant changed his solicitors again, and this application so far from being made at the earliest opportunity, was not filed until September 21st, nearly six weeks later. Again it is only technically true that Messrs. Drew & Napier could not file better grounds of appeal because they had no copy of the record,

since they could have obtained a copy from Messrs. Sisson & Delay. As regards the grounds of decision, if it is true that Messrs. Drew & Napier only received these grounds on the 12th August, that is entirely the fault of the appellant himself, to whom the grounds of decision were handed by Messrs. Sisson & Delay when they received them from the Court on the 18th July. If the rules are to be relaxed in a case like this, it is more than likely that a practice will grow up of filing in the first instance nominal grounds of appeal only, such as were filed on the 25th July, reliance being placed on an application to amend such grounds at a later date. The provisions of the Criminal Procedure Code state clearly and fairly what the rules of procedure are, and such rules, as stated by the Court of Criminal Appeal in *Nagalingam's* case, should only be relaxed in very exceptional circumstances. I feel satisfied that no such circumstances have been shown to exist and that accordingly this application must be refused.

Application refused.

Solicitors: *Braddell Bros. & Sisson & Delay.*

REX v. LEONG AH CHAN & OTHERS.

[A. Cr. J. (Gordon-Smith J.) October 25, 1935]
[Singapore Special Case No. 4 of 1935]

Ordinance No. 129 (Traction Engines and Motor Cars), s.16 — Statutory rules made thereunder.

Rule 11(2) contained in *Gazette* Notification No. 2606 of 1928 and made under section 16 of Ordinance No. 129 (Traction Engines and Motor Cars) is *ultra vires* and invalid.

Worley (Deputy Public Prosecutor) for the Crown.

Accused in person.

The facts and arguments sufficiently appear from the judgment.

Cur. Adv. Vult.

[39] **Gordon-Smith J.:** The above four cases have been transmitted in accordance with section 310 of the Criminal Procedure Code for the consideration of the High Court by way of special cases stated by the Magistrate in respect of questions of law arising in the respective proceedings.

All four cases arose out of charges made under rule 11(2) of *Gazette* Notification 2606 of 1928 made under section 16 of Ordinance No. 129 (Traction Engines & Motor Cars). In cases (a), (b) and (c) the charges were in respect of the use of worn tyres on lorries, the use of which by reason of their condition was likely to cause danger, and case (d) was brought under the same sub-rule but was in respect of an act likely to cause danger when driving a lorry, namely permitting two persons to travel on the lorry in such a positon and manner as was likely to cause danger to such persons.

The cases were set down for argument on the 7th October and at the outset I intimated to the Deputy Public Prosecutor that it appeared to me that the preliminary point as to the validity of the rule in question arose, on which I should like to hear argument, and the cases stood over for further consideration. This point had not been taken by the Magistrate in stating the cases.

The Deputy Public Prosecutor now states that he is unable to support the validity of the rule in question. In considering the point of the validity of this rule 11 it is necessary to consider the terms of the substantive Ordinance, namely Ordinance 129 as well as the rules promulgated thereunder, but I do not propose to go into the history of the Ordinance which appears in the 1926 Revised Edition of the Laws as Ordinance No. 129 (Traction Engines and Motor Cars) the long title of which is "An Ordinance to regulate the use on public thorugh-fares of Traction Engines and Motor Cars."

In section 2 of the Ordinance a "Motor Car" is defined as including "every description of vehicle propelled by mechanical power other than a Traction Engine." "Traction Engine" means every description of vehicle propelled by mechanical power not constructed for the conveyance of passengers, but shall not include a fire engine or vehicles used in connection therewith."

It follows therefore that a motor lorry is a traction engine and is not a motor car under such definitions but hereafter when I use the expression 'Motor Vehicle' it includes all types of mechanically propelled vehicles save and except fire engines and vehicles used in connection therewith.

The Ordinance provides, shortly, for the licensing and registration of motor vehicles, their identification by means of marks and numbers, the licensing of drivers of such vehicles and the endorsement, suspension and cancellation of drivers' licences. A few offences are also created by the Ordinance itself, such as failing to stop in case of accident (section 9) and in respect of negligent driving, overcrowding, projecting loads and riding otherwise than inside a motor car (section 10). The whole Ordinance only extends to 21 sections but wide powers are conferred upon the Governor in Council to issue orders under section 11 and to make rules under section 16. Section 11 gives power to restrict the use of motor vehicles in certain cases or in certain localities and section 16 is the general rule making authority which particularises to some extent the matters on which rules may be made. These are briefly as follows:—

Para. (a) brakes
„ (b) rules of the road
„ (c) horns
„ (d) emission of sparks, smoke and vapour
„ (e) & (f) are set out below in full
„ (g) trailers of traction engines
„ (h) & (i) the means of identification
„ (j) & (k) registration and fees
„ (l) number of persons to be carried
„ (m) drivers' licenses and fees
„ (n) lights.

Paragraphs (e), (f) and (o) read respectively as follows:—

"(e) to prohibit the use of any appliances or the doing of any act which is likely to cause annoyance or danger;

(f) to regulate the width of tyres, the material of which they may be made and, if necessary, to prohibit the use of any tyres likely to cause damage to roads;

(o) generally to carry out the purposes of this Ordinance."